

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
WESTERN DIVISION

United States of America,

Case No. 15-cr-371

Plaintiff

v.

ORDER

Ira Brown,

Defendant

Defendant Ira Brown moved for a pre-plea determination as to the applicability of the Armed Career Criminal Act to his sentencing if he were convicted. (Doc. No. 34). After briefing by the parties, I found he had committed three violent felonies and was considered an armed career criminal. (Doc. No. 40). On October 2, 2017, the government filed a notice of adverse decision, notifying the court of the post-briefing opinion of the Sixth Circuit in *United States v. Yates*, 866 F.3d 723 (6th Cir. 2017). (Doc. No. 41). Departing from its unpublished decision in *United States v. Mansur*, 375 F. App'x 458 (6th Cir. 2010), and several district court decisions on the matter, the Sixth Circuit found the force required to commit robbery in the third-degree under O.R.C. § 2911.02(A)(3) did not rise to the type of *violent* force required to qualify as a “crime of violence” under the sentencing guidelines and in turn, a violent felony under the Armed Career Criminal Act. *Yates*, 866 F.3d at 727-32; *contra, e.g., United States v. Campbell*, 2017 WL 3328538, at \*3-\*4 (E.D. Ky. Aug. 4, 2017) (finding Ohio third-degree robbery fell within the “use of force” clause); *United States v. Artis*, 2017 WL 495610, at \*2-\*3 (E.D. Ky. Feb. 7, 2017) (same); *United States v. Jordan*, 2016 WL 3654469, at \*2 (S.D. Ohio July 8, 2016) (same). Accordingly, pursuant to the holding in *Yates*,

Brown's 2007 conviction of robbery in the third-degree under O.R.C. § 2911.02(A)(3) is not a violent felony under the Armed Career Criminal Act. Since Brown committed only two violent felonies, as previously discussed in the memorandum opinion filed on September 29, 2017, he is not an armed career criminal.

So Ordered.

s/ Jeffrey J. Helmick  
United States District Judge